

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 2014-1230
Plaintiff-Appellee,	:	
v.	:	On Appeal from the
	:	Madison County Court of Appeals,
	:	Twelfth Appellate District
LOWELL W. THOMPSON,	:	Case No. CA2014-04-010
Defendant-Appellant.	:	

REPLY BRIEF OF APPELLANT LOWELL W. THOMPSON

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TABLE OF CONTENTS

	<u>Page No.</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE AND FACTS.....	1
ARGUMENT IN SUPPORT OF PROPOSITION OF LAW.....	1
PROPOSITION OF LAW:	
<u>Proposition of Law:</u>	
An order denying a motion to correct jail-time credit filed under R.C. 2929.19(B)(2)(g)(iii) is an order that affects a substantial right, and is therefore a final, appealable order. R.C. 2505.02(B).....	1
CONCLUSION.....	2
CERTIFICATE OF SERVICE	3

TABLE OF AUTHORITIES

Page No.

CASES:

State v. Cline, 10th Dist. Franklin No. 13AP-548, 2013-Ohio-5399.....2

State v. Norris, 7th Dist. Monroe No. 14 MO 7, 2014-Ohio-5833.....2

State v. Quarterman, 8th Dist. Cuyahoga No. 101064, 2014-Ohio-57962

State v. Roberts, 134 Ohio St.3d 459, 2012-Ohio-5684, 983 N.E.2d 334.....2

State v. Verdi, 6th Dist. Erie No. E-13-025, 2013-Ohio-5630.....2

STATUTES:

R.C. 2505.02 1

R.C. 2929.19 1,2

STATEMENT OF THE CASE AND FACTS

Mr. Thompson relies on the Statement of the Case and Facts contained in his merit brief.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW

An order denying a motion to correct jail-time credit filed under R.C. 2929.19(B)(2)(g)(iii) is an order that affects a substantial right, and is therefore a final, appealable order. R.C. 2505.02(B).

The State does not dispute that Mr. Thompson was confined related to this case for 87 days that were not credited against his sentence. The State as submitted that the procedure under R.C. 2929.19(B)(2)(g) that Mr. Thompson used to seek credit for that missing time “might be” a special proceeding. State’s Brief at 6. The State concedes that Mr. Thompson’s motion under that section implicated a substantial right. *Id.* at 5. And, the State does not dispute that there are no other Ohio appellate opinions that agree with the court below. *Id.* at 7. In short, the State presents this Court with no reasoning or case law to contradict Mr. Thompson’s proposition.

Instead, the State attempts to argue that res judicata would have barred Mr. Thompson’s motion. *Id.* at 8. The State did not raise that issue in its motion to dismiss, it was not addressed by the court below in its dismissal entry, and it distracts from the issue at hand. Had Mr. Thompson been allowed to appeal the denial of his motion for jail-time credit, the State might have been able to develop that issue. Additionally, most of Ohio’s courts do not agree with the State’s position regarding res judicata, and that issue is pending in front of this Court in the form of a jurisdictional memorandum in *State v. Carpenter*, Case No. 2015-0228.

Similarly, while the State cites two cases holding that ruling on a motion under R.C. 2929.19(B)(2)(g) gives that section a retroactive effect, there are at least as many cases applying the revised procedure to people sentenced before its effective date but who filed motions

afterward, some of which come from the same districts as the cases the State cited. *See, e.g., State v. Verdi*, 6th Dist. Erie No. E-13-025, 2013-Ohio-5630, ¶ 9; *State v. Norris*, 7th Dist. Monroe No. 14 MO 7, 2014-Ohio-5833, ¶ 20; *State v. Quarterman*, 8th Dist. Cuyahoga No. 101064, 2014-Ohio-5796, ¶ 8; *State v. Cline*, 10th Dist. Franklin No. 13AP-548, 2013-Ohio-5399, ¶ 8 (all applying the revised statute to individuals sentenced before its effective date); *see also State v. Roberts*, 134 Ohio St.3d 459, 2012-Ohio-5684, 983 N.E.2d 334 (this Court held that “the use of prior facts * * * does not make application of the statute retroactive”). The State’s two arguments do not constitute a good reason for this Court to ratify the Twelfth District’s unreasonable decision that Mr. Thompson’s motion under R.C. 2929.19(B)(2)(g) did not entitle him to appellate review. And, again, those arguments are not relevant to this appeal and the proposition of law before this Court.

Mr. Thompson has been denied the right to an appeal because the appellate court below declared that R.C. 2929.19(B)(2)(g) did not result in a final, appealable order. The State has nearly conceded that it does. If this Court finds that the State’s arguments regarding res judicata and retroactivity deserve further review, that review should take place in the first instance in the appellate court. This Court should reverse the appellate court’s determination that Mr. Thompson’s motion under R.C. 2929.19(B)(2)(g) did not result in a final, appealable order and remand Mr. Thompson’s case to that court for proper consideration of his appeal.

CONCLUSION

For the foregoing reasons, this Court should reverse the Twelfth District’s holding and remand for proper consideration of the merits of Mr. Thompson’s claim.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **REPLY BRIEF OF APPELLANT LOWELL W. THOMPSON** was forwarded by regular U.S. Mail to Stephen J. Pronai, Madison County Prosecuting Attorney, 59 N. Main Street, London, Ohio 43140, this 8th of April, 2015.

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